

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IN RE PAUL A. MORABITO,

Debtor.

JH, INC., *et al.*,

Appellants,

v.

JEFFREY HARTMAN, *et al.*,

Appellees.

Case No. 3:21-cv-00252-MMD

Bankr. Case No. 3:13-bk-51237-GWZ

ORDER

On June 2, 2021, Appellants JH, Inc., Maryanna Herbst (as Trustee of the Herbst Family Trust), Berry-Hinckley Industries, Troy D. Herbst, Timothy P. Herbst, and Edward J. Herbst filed a notice of appeal from the Bankruptcy Court. (ECF No. 1.) Appellants filed their opening brief on January 14, 2021 (ECF No. 12), Appellees Jeffrey L. Hartman, Hartman & Hartman, David R. Houston, and Law Office of David R. Houston timely filed their answering brief (ECF No. 31), and Appellants timely filed their reply (ECF No. 32). On February 8, 2022, Appellee Jeffrey Hartman filed a suggestion of death on the record, indicating that David Houston had died on December 11, 2021, and that he was unsure whether a personal representative or executor had been appointed. (ECF No. 34.)

Pursuant to Federal Rule of Civil Procedure 25(a)(1), “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). “If a party dies after a notice of appeal has been filed or while a proceeding is pending . . . , the decedent’s personal representative may be substituted as a party on motion filed with the

1 . . . clerk by the representative or by any party. A party's motion must be served on the
2 representative in accordance with Rule 25." Fed. R. App. P. 43(a)(1). As such, if there is
3 no motion for substitution within 90 days of the date of this order, the Court will dismiss
4 Appellee David R. Houston from this matter. *See Hall v. Yup*, No. 18-15581, 2018 WL
5 7954073 (9th Cir. Dec. 21, 2018) (dismissing appeal without prejudice when no
6 representative for deceased appellee came forward).

7 DATED THIS 9th Day of February 2022.

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11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
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